

State Water Resources Control Board

The Division of Administrative Services will hold on August 5, 2019 a Water Rights Fee Stakeholder meeting to provide an overview of the potential fee changes staff will be recommending to the State Water Board for approval at the September 17, 2019 Board Meeting. This summary provides a description of the options which were discussed at prior stakeholder meetings and which option staff prefers.

Accompanying this summary are several attachments which provide a look at the budgetary cost drivers, the water rights fund condition, the impact of proposed permits, licenses, and application fees will have on various water rights holders, revenue and expenses incurred for Federal Energy Regulatory Commission (FERC) certifications, proposals for petition fees, small Irrigation use registration for cannabis, water right application fees, and water rights permitting process fees.

Fund Condition and Cost Drivers

Total budgetary expenditures for FY 2019-20 are \$27 million. As shown in Attachment 1, expenditures for FY 2019-20, include: (1) CalEPA Sacramento Headquarters Space Optimization which is shown with a \$1.66 million decrease, however, as noted the balance will carry-over to the next fiscal year, (2) Control Section Adjustment for Employee Compensation Cost of \$1.02 million, and (3) Administrative Hearings Office (AB 747) costs of \$1.72 million. The cost drivers represent a combination of one-time and on-going costs.

Attachment 2 shows an analysis of the fund condition for the Water Rights Fund (WRF). The beginning balance for FY 2018-19 was \$3.6 million. Total estimated revenue is \$21.2 million and total estimated expenditures are \$23.7 million, resulting in an \$2.5 million decrease in the fund with an ending balance of \$1 million and a fund reserve of approximately 4.5 percent.

A prudent fund reserve of approximately 10 percent is typically targeted in order to absorb economic uncertainty and other contingencies. However, with the increased costs detailed above, this year the State Water Board staff is targeting a 5 percent fund reserve with the expectation to build it back to 10 percent in the coming years. To cover expenditures and ensure a 5 percent reserve for FY 2019-20, staff currently anticipates needing to generate approximately \$3.94 million of additional revenue or the fund will be operating in a deficit. This amount assumes the new Onstream Reservoir Fee for Cannabis Water Rights will increase revenue by approximately \$425,000 from \$500,000 to \$925,000. Please see the Cannabis Onstream Reservoir Fee section below for more details regarding this proposed fee.

Staff is recommending increasing fees in the following areas for FY 2019-20 to meet this objective: Permits, License, and Applications, and FERC licensing. Other fee increases will also be recommended, however, the purpose of these fee increases would not be to cover the fund deficit, but rather to more closely align the fees with the staff time required to process them. Additionally, while staff have received comments from stakeholders about the possibility of establishing a “participation fee” to cover AB 747 costs, the State Water Board does not have the authority to impose such a fee without a legislative change.

Permits, License, and Applications

Based on data available, there are approximately 14,300 water rights permits of which 5,341 (37 percent) are charged solely the base fee. The following are options were presented at the June stakeholder meeting to generate the additional revenue to establish a 5 percent fund reserve:

Option 1 increased fees for Permits, License, and Applications from \$0.073 to \$0.090 (23 percent) on the per acre foot charge (greater than 10 acre-feet) with no increase to the permit or license base fee, resulting in total revenue of approximately \$27.4 million, with an ending balance of approximately \$1.4 million and a fund reserve of 5.5 percent.

Option 2 increased fees for Permits, License, and Applications from \$0.073 to \$0.089 (22 percent) on the per acre foot charge (greater than 10 acre-feet) and raised the permit or license base fee from \$225 to \$250 (11 percent), resulting in total revenue of approximately \$27.5 million, with an ending balance of approximately \$1.5 million and a fund reserve of 5.9 percent.

Option 3 increased fees for Permits, License, and Applications from \$0.073 to \$0.087 (19 percent) on the per acre foot charge (greater than 10 acre-feet) and raised the permit or license base fee from \$225 to \$275 (22 percent), resulting in total revenue of approximately \$27.4 million, with an ending balance of approximately \$1.4 million and a fund reserve of 5.6 percent.

Option 4 increased fees for Permits, License, and Applications from \$0.073 to \$0.085 (16 percent) on the per acre foot charge (greater than 10 acre-feet) and raised the permit or license base fee from \$225 to \$300 (33 percent), resulting in total revenue of approximately \$27.3 million, with an ending balance of approximately \$1.3 million and a fund reserve of 5.2 percent.

Staff is prepared to recommend Option 4 at the September Board Meeting. As staff spends a significant amount of time reviewing and processing applications, this option, which increases the base fee from \$225 to \$300 and the per acre-feet fee from \$0.073 to \$0.085, is seen as the most equitable option as all water rights holders will share in the increase in program costs. Alternatively, if just the per-acre-feet fee is increased, 37 percent of water rights holders who pay just the base fee would not be affected. Furthermore, staff has requested feedback from the community following the previous stakeholder meetings and the majority of feedback received prefer Option 4.

401 Certification for Federal Energy Regulatory Commission (FERC)

The above options presented for Permits, License, and Applications presume an increase in the overall FERC fees of approximately \$675,000 (22 percent increase). Current FERC revenues under the existing fee schedule are approximately \$3.1 million with expenditures of \$3.6 million leaving a deficit of nearly \$500,000. The \$675,000 increase would help the FERC program cover expenditures and contribute its share to the WRF. Please see Attachment 3 for more information regarding the options presented at the June stakeholder meeting.

Staff considered three options to generate the revenue needed to accomplish this goal: Options 1 and 2 kept the current structure of different base and per kilowatt (kw) fees depending on whether the project is licensed or undergoing licensing, while Option 3 proposed the same fees regardless of status.

Option 1 kept the base fee for both licensed and undergoing licensing at the current fee of \$100 and \$1,000 respectively, while increasing the licensed per kw fee from \$0.125/kw to \$0.154/kw (23 percent) and the undergoing license per kw fee from \$0.43 to \$0.529/kw (23 percent).

Option 2 increased both the base fee and cost per kilowatt. Under this option, the base fee for licensed projects would have increased from the current fee of \$100 to \$5,000 and the per kw fee from \$0.125/kw to \$0.128/kw (2.4 percent). The undergoing licensing fee would have increased from the current base fee of \$1,000 to \$5,000 and the per kw fee from \$0.43 to \$0.492/kw (14.4 percent). To some degree, this option addressed small kilowatt projects and water quality certification amendments, which require a significant amount of staff time.

Option 3 consisted of creating equal base fees and cost per kilowatt for all hydroelectric projects, whether pursuing a water quality certification or operating under a FERC license with certification conditions. This option addressed the ongoing and often significant workload associated with implementing provisions of the FERC license following water quality certification issuance. Under this scenario, the base fee for undergoing licensed and licensed projects is set to \$1,000 and the cost per kw for both pre and post-licensing fee would increase to \$0.452.

Staff is prepared to recommend Option 3.

Petitions

Staff will recommend adjusting petition filing fees and annual fees for change petitions, time extension petitions, wastewater change petitions, and temporary change petitions. Staff's proposed fee structure options associated with these filings can be found in Attachment 4. The primary reasons for adjusting fees for this group are as follows:

- Annual fees for change petitions and time extension petitions have not been adjusted since these fees were established in 2004.

- The fee structures for filing change petitions, time extension petitions, and temporary change petitions have not been adjusted since Fiscal Year 2004-2005 except for the maximum fees being adjusted for inflation each year.
- The current fee only covers approximately 5 percent to 20 percent of actual cost.
- Even with the proposed adjustments, the increases do not keep up with the rate of inflation and increased operational costs over more than 15 years since the fees were initiated.
- Petitions have become significantly more complex, requiring increased staff review.
- The new fee schedule includes a reduced filing fee for a time extension petition filed in conjunction with a change petition to reflect potential reduction in staff cost and streamlining of the process.
- Filing fees for wastewater change petitions (WWCPs) have not been adjusted since the WWCP fees were initiated in 2004. Currently, the State Water Board only charges a one-time fee for WWCP filings and charges no annual fees. The filing fees for WWCPs are minimal comparing to the economic benefits to the petitioners through the reuse or recycle of treated wastewater resulting from the WWCP program.
- There is a proposed reduction in annual fees for petitioners that have met all timelines and requirements for the Division of Water Rights to proceed but are experiencing extended processing timelines due to limitations in staff resources.

Cannabis Onstream Reservoir Fees

Staff will recommend additional fees for processing Cannabis Small Irrigation Use Registration (SIUR) filings for onstream reservoirs (see Attachment 5). The additional fees for Cannabis SIUR filings for onstream reservoirs are primarily based on an increase of staff cost associated with field inspection, development of site-specific terms and conditions, and review and oversight of compliance plans for the onstream reservoirs. The site inspection will include a Doppler based reservoir survey, results of which will be provided to the cultivator. The cost of this service and documentation through a private vendor would far exceed the proposed fee. The initial filing fees and incremental increase in annual fees are reasonable when compared to other agency fee structures and do not cover the entire cost of resources needed to process the filings.

Applications Filing Fee Initial Review

Filing Fee Non-Refundable Portion. Staff will recommend raising the non-refundable portion of the initial application fee from \$250 to \$500 as a base fee plus 10 percent of the actual application filing fee (see Attachment 6). This fee would be raised for the five types of applications (applications and temporary permit applications, small hydropower applications and temporary permit applications, temporary permit applications to divert to underground storage during high flow events). The higher base fee would more accurately reflect resources expended for initial review of a small simple application, whereas the addition of an acre-foot charge will better reflect resources needed to review larger more complex filings. The fee will also define the initial review period.

Underground Storage Streamlined Permitting Process Proposed Fees

State Water Board staff are in the process of developing a proposed approach for the streamlined processing of “standard” applications to appropriate high flows for diversions to underground storage. No changes to the temporary permit fees are proposed. The proposed approach under development will not change any existing laws or regulations and will be focused primarily on the water availability analysis aspect of application processing. The types of projects intended to be covered would focus on an applicant who is a Groundwater Sustainability Agency or local agency as defined by Sustainable Groundwater Management Act (SGMA), for a project consisting of diversions during periods of high flows, as defined in the guidance, between December 1 and March 31 to underground storage basin identified in Bulletin 118.

Staff proposed fee structure options associated with the application fee for new applications filed and the permit and license annual fee for water rights issued pursuant to the proposed approach (see Attachment 7):

Standard Application Filing Fee

Option 1 retained for eligible projects, the current standard application filing fee for these types of applications. The current fee is \$1,000 plus \$15 per each acre-foot greater than 10 acre-feet or the maximum cap currently \$534,155, whichever is less.

Option 2 reduced the current standard application fee by 25 percent for eligible projects. Though these projects would go through all the same processing milestones as other applications, there is expected to be savings in staff time due to the applicant’s election to use streamlined water availability analysis and to accept related conditioning.

Annual Water Right Fee for Permittee/Licensee based in part on Actual Diversions

Option 1 would continue to apply for eligible projects, the standard permit and license annual fee for these types of projects. See **Permits, License, and Applications** above for options.

Option 2 reduced the annual fee for eligible projects based in part on actual diversions. The permit or license annual fee (based on amount of water diverted) or 75 percent of the standard annual fee (based on face value), whichever is greater. This reduction would recognize that these projects target diversions only during periods of high flows during a limited season.

Staff is prepared to recommend Option 2 for both the standard application filing fee and the annual water right fee for permittee/licensee based in part on actual diversions.